

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

NATIONS RENT

Employer

and

Case 3-RC-11395

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 545, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, (“Act”), a hearing was held before a hearing officer of the National Labor Relations Board (“Board”).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Nations Rent (“Employer”) is a Delaware corporation with a facility located at 415 East Taft Road, North Syracuse, New York, where it sells, rents and services industrial and construction equipment. The parties stipulated that, within the past twelve months, in the course and conduct of its business, the Employer purchased and received at its 415 East Taft Road, North Syracuse, New York facility, goods and materials valued in excess of \$50,000 directly from points located outside the State of New York. Based on the parties’ stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties stipulated, and I find, that International Union of Operating Engineers, Local 545, AFL-CIO (“Petitioner”) is a labor organization within the meaning of Section 2(5) of the Act.

A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks an election in a bargaining unit comprised of all full-time and regular part-time road/field mechanics, shop mechanics, drivers, yard persons, drive-thru-attendants and parts inventory associates, excluding all outside sales representatives, managers, professional employees, guards and supervisors as defined in the Act.¹ The parties have stipulated that this is an appropriate unit. However, the parties are in dispute regarding the inclusion of the parts inventory associate position in the unit. The Employer seeks to exclude from the bargaining unit the parts inventory associate position, currently held by Vicky Frey, on the basis that she does not share a community of interest with the other employees in the stipulated unit. The Petitioner, to the contrary, asserts that the parts inventory associate position is properly included in the unit.

The parties also stipulated that the following employees should be excluded from the unit as they are supervisors within the meaning of Section 2(11) of the Act: Bill Dow, store manager; Mark Boswell, assistant store manager; and Doug Emory, dispatch supervisor. The parties also stipulated that the following employees should be excluded from the unit as they do not share a sufficient community of interest with the employees in the petitioned-for unit: Paul Snell and Kenneth Jerome, outside sales representatives, and Doug Osborne, inside sales representative.

The Employer rents and sells construction equipment, merchandise and spare parts. It services its own rental equipment as well as the construction equipment of others. The Employer, at the North Syracuse facility, employs a store manager, assistant store manager, two outside sales representatives

¹ The Petitioner amended its petition at the hearing.

and a dispatch supervisor. There are five mechanics, two drivers, one shop foreman, one drive-thru attendant, one yard person and one parts inventory associate in the petitioned-for unit.

The Employer's facility consists of a single building and an equipment yard. The building includes a showroom, and warehouse/shop. The showroom area has a display of equipment, a rental counter where the inside sales person is stationed and the assistant manager's desk. The store manager has an office separate from the showroom. This office is located just down the hallway from an employee break room and a timeclock used by hourly employees for punching in their time cards. The hallway connects the showroom to the warehouse/shop area. The parts inventory associate is currently located in the warehouse/shop area, behind a partially enclosed counter space.² The counter holds the parts inventory associate's computer and behind the counter are bins containing parts. The mechanics, shop foreman and yard personnel are located in the shop area. Beyond the shop area is the yard, which holds large equipment.

The Employer's outside sales employees seek out new customers and are responsible for retaining existing customers. The outside sales employees are supervised by the store manager, who, in turn, is supervised by the district manager. The Employer also employs an inside sales person to provide sales and rental contracts to customers that walk into the facility. In so doing, the inside sales person uses a computer to access a program called rentracker to create sales and rental agreements. The inside sales person is supervised by the assistant manager. The Employer's drivers deliver and retrieve equipment to and from job sites.³ The dispatch supervisor gives the drivers their assignments and supervises their work. A yard representative selects and demonstrates equipment for customers.

² By the end of the year, the Employer asserts that it intends to move the parts area from the shop to the showroom. It would then be located in the left wing of the showroom behind the rental counter. This is intended to increase the number of parts that are purchased by customers.

The showroom is located approximately 60 to 70 feet from the parts counter.

³ The drivers are required to have an appropriate license to perform their jobs as well as two years of commercial driving and experience in the movement of construction equipment. They also must be able to lift 80 pounds and be physically flexible, as well as being able to read instructions and numbers and write legibly.

He also prepares and inspects rental equipment for safety and damage.⁴ The yard representative, the mechanics and drive-thru-attendant report to the shop foreman, who is also a mechanic.⁵ The mechanics service and repair equipment, and ensure that it is functioning properly. The shop mechanics perform on-site repair of the Employer's and customers' equipment. The field mechanics travel off-site to repair and perform preventative maintenance on equipment. The majority of the repairs and service are performed on the Employer's equipment. The mechanics are alerted to the necessity of repairs by receiving a work order from the parts inventory associate.

The parts inventory associate, Frey, in addition to generating and closing work orders, also acquires, inventories and supplies parts. In so doing, she interacts with mechanics and drivers on a daily basis. In creating the computer generated work and purchase orders, Frey frequently discusses with the mechanics the parts they need to perform repairs or service. Frey determines the correct part to order or supply by referring to parts catalogs or examining parts in the shop. Frey uses the computer-generated purchase orders to obtain parts from various vendors and is responsible for verifying that they have been received.⁶ Frey also stocks the parts. Approximately 70 percent of these parts are used on the Employer's equipment. She alerts the mechanics that an ordered part has arrived, and informs them when they have been assigned a work order and she informs the mechanics of the priority of the repairs to be performed. Frey provides parts to the drivers for delivery. Frey uses the computer to track how frequently equipment is repaired in order to calculate the cost of maintaining each piece of equipment. She also bills customers for their parts. Frey provides parts to walk-in customers, but, she only sees

⁴ The yard associate is not required to have any special education or experience beyond a high school diploma or its equivalent.

⁵ The mechanic is required to have three to five years of experience as a mechanic, including training with diesel engines, hydraulics and electrical equipment as well as have the ability to lift 50 pounds, be physically flexible and effectively communicate. The shop foreman is required to have five years of experience as a mechanic including diesel, hydraulics and electrical training as well as possess the ability to lift 50 pounds, be physically flexible and have good communication skills. The drive-thru-attendant is required to have a high school diploma, or its equivalent, as well as one year of knowledge of construction and industrial equipment and. one year of customer service experience.

⁶ The mechanics and drivers do not have access to the computer.

about three to five customers a week.⁷ When customers have a question about a part, Frey asks the shop foreman or another mechanic for assistance. While there are plans to move the parts area in order to increase walk-in business, this move would neither alter Frey's interaction with the mechanics and drivers, which occupies approximately 90 percent of her time, nor the other duties that she performs.

Frey is supervised by the store manager, as is Donald Bush, the shop foreman, whom the parties have agreed should be included in any bargaining unit found appropriate. Bush performs Frey's job when she is on vacation or ill. Accordingly, Bush has access to the necessary computer programs to generate purchase and work orders. Frey trained Bush regarding use of the computer to perform these tasks. Frey was trained to use the computer when she was hired. Beyond being trained on the computer, Frey was not required to have any specific qualifications to obtain her position.

Approximately two years ago, Frey was also trained to generate rental and sales contracts on the computer, however, the record establishes that she does not perform these tasks.⁸

Frey, who is an hourly employee, receives the same benefits as the other hourly employees the parties have agreed to include in the bargaining unit. She receives the same vacation and holiday benefits and she is eligible for the Employer's non-matching 401(k) pension plan. She is also entitled to the same health care benefits. All of the employees, including Frey,

⁷ A customer would not buy parts directly from Frey, but rather, Frey provides the part to the customer who purchases it at the sales/rental counter.

⁸ Frey interacts with the inside sales representative, Doug Osborne. Osborne performs uses the computer to obtain information from the original rental agreement, if a customer damages the Employer's equipment and is going to be charged for the repair. Whether or not the customer is charged is determined by the shop foreman, Donald Bush or by the store manager.

wear uniforms. She uses the same bathroom and break room facilities as the other employees. Frey's hourly wage is comparable to some of the employees in the petitioned-for unit.⁹ She also works the same or similar schedule as the mechanics, drivers and yard employees.¹⁰ Frey and the employees included in the petitioned-for unit are evaluated yearly by the store manager. They all report illness-related absences to the store manager. The petitioned-for employees, including Frey, are disciplined by the store manager, with the consent of the Employer's human resource department located in Shrewsbury, Massachusetts.

ANALYSIS

In determining unit appropriateness, the Board does not consider whether the requested unit is the *most* appropriate unit, but rather if it is *an* appropriate unit. The Boeing Co., 337 NLRB No. 24, slip op. at 2 (2001); Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964); Home Depot USA, Inc., 331 NLRB 1289, 1290 (2000). A unit is deemed appropriate when the employees in the unit share a community of interest. NLRB v. Action Automotive, 469 U.S. 490, 494 (1985). In order to determine whether a community of interest exists, the Board examines factors such as wages; hours of work; employment benefits; nature of supervision; differences in qualifications, training and skills; differences in job functions and amount of time spent away from the plant situs; interchange or contact with other employees; integration with the work functions of other employees; and history of bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). See also The Boeing Co., *supra*.

The record discloses that the parts inventory associate shares a community of interest with the other employees in the petitioned-for unit and should be included in the unit. As discussed below, the

⁹ Frey earns \$12.53 per hour; the yard employee earns \$12.95 per hour, and the attendant earns \$13.52 an hour, the mechanics earn between \$15.10 and \$17.97 per hour, the shop foreman earns \$18.51 per hour; the drivers earn between \$15.95 and \$16.90 per hour.

¹⁰ The facility is open from 7:00 a.m. to 5:00 p.m. Monday through Friday. Frey works from 7:30 a.m. to 4:00 p.m. She is not on call, unlike some of the drivers and mechanics.

parts inventory associate shares common wages, hours, benefits, supervision and has frequent contact with the employees in the petitioned-for unit.

The record discloses that the parts inventory associate's terms and conditions of employment are similar to those of the other employees in the unit. She receives the same benefits, punches the same timeclock, wears the same uniform and works the same hours, and is paid a comparable hourly wage. She is directly supervised, by the store manager, as is the shop foreman, who is also included in the unit.¹¹ Frey and the other employees in the unit are disciplined by the store manager; with the consent of the Employer's human resources department. Frey was not required to have any special skills when she obtained her position, and was trained on the job. Similarly, neither the yard person, nor the drive-thru attendant, needed special skills or training to obtain their positions. Further, Bush performs Frey's job when she is away, and he received on-the-job training from Frey in order to perform her job. Frey has frequent contact with the other employees in the unit. Specifically, she spends 90 percent of her day interacting with the drivers and the mechanics in order to perform her job duties. She also works in the same area as the other employees in the unit. While her work station may eventually change, this will not alter her duties or affect her frequent work-related interactions with the drivers and mechanics in the unit.

The cases cited by Employer in its post-hearing brief, such as Eastern Iron, *supra*, E.H. Koester Bakery Co., 136 NLRB 1006 (1962) and Taylor Bros., Inc., 230 NLRB 861 (1977), are distinguishable. The Board found in those cases that the employees at issue should be excluded from the petitioned-for units where they either worked separately from the other employees with little or no work-related contact, or had a marked difference in skill levels or job functions from that of the other employees.

APPROPRIATE UNIT

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time road/field mechanics, shop mechanics, drivers, yard person, drive-thru-attendant and parts inventory associate; excluding all outside sales representatives, managers, professional employees, guards and supervisors as defined in the Act.

There are approximately 11 employees in the bargaining unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12

¹¹ In this regard, the instant matter is distinguishable from Eastern Iron & Metal Co., 106 NLRB 1261 (1953), relied on by the Employer in its post-hearing brief. In Eastern Iron, the Board excluded an employee from a petitioned-for unit

months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 545, AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Acting Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such lists must be received in the Albany Resident Office, Room 342, Leo W. O'Brien Federal Building, Clinton Avenue and North Pearl Street, Albany, New York 12207 on or before December 29, 2003. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by January 2, 2004.

DATED at Buffalo, New York this 18th day of December 2003.

HELEN E. MARSH,
Regional Director
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